IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.3096 OF 1991

Doulu Naiku Gholap)
Age-75 years, Occ.: Nil)
residing at Parale Ninai, Tal.)
Shahuwadi, Dist. Kolhapur)..Petitioner

Versus

1. Madhuri Madhukar Prabhavalkar)
through P.A.Prabhavalkar)
Ramkrishna Prabhavalkar)
residing at Malkapur, Parale)
Ninai, Tal.Shahuwadi,)
Dist. Kolhapur.)

2. Indirabai R.Purushotham)
Prabhavalkar,)
residing at Malkapur, Parale)
Ninai, Tal. Shahuwadi)
Dist. Kolhapur.)..Respondents

Miss. A.R.S.Baxi for the petitioner.

Mr.P.D.Dalvi for Respondent No.1.

Coram : R.S.Mohite,J

Date : 17.11.2005.

Judgment :-

1. The writ petition impugns the Judgment and order dated 9.4.1991 passed by Maharashtra Tribunal Pune Camp at Kolhapur in Revision No.MRP-KP-143/1987. The revision filed before the Maharashtra Revenue Tribunal by the present respondent no.1 Madhuri Prabhavalkar came to be allowed and the judgment and order passed in Tenancy Appeal No.22/86 passed by

the Assistant Collector, Kolhapur came to be quashed and set aside.

2. The brief facts of the case are as follows :-

(a) In the revenue years 1957-58 and 1958-59 the name of the petitioner Doulu was shown as a tenant in respect of the land bearing survey no.115 admeasuring 12 hector and 22 gunthas situated in village Parale Ninai, Taluka Shahuwadi, Dist.Kolhapur.

(b) In due course, 32-G proceedings were commenced by the Additional Mamletdar and ALT Shahuwadi and by his order dated 13.11.1964 after recording the willingness for the purchase by the tenants, the purchase price came to be fixed.

(c) Aggrieved by the order passed against him, the landlord Purushotham R.Prabhavalkar filed an appeal being TNC/AP No.13/65 before the Prant Shahuwadi and this appeal was partly allowed by his Judgment and order dated 30.3.1965. By his Judgment and order the Prant Shahuwadi remanded the matter for a fresh decision after an additional enquiry to the Additional Mamletdar and ALT Shahuwadi.

(d) On 12.3.1966 the Additional Mamletdar and ALT Shahuwadi passed an order declaring the purchase

ineffective as the tenant remained absent though duly served. The record indicates that though such an order was passed, there is no document on record to show that it was ever served upon the petitioner.

(e) Sometime in the year 1982, the petitioner was dis-possessed forcibly and he made a grievance regarding the same to the Tahasildar and ALT Shahuwadi. By letter dated 5.12.1985 Tahasildar and ALT Shahuwadi sought directions from the Additional Collector, Shahuwadi regarding the steps required to be taken.

(f) On 6.5.1986 the petitioner filed an appeal impugning the Judgment and order dated 12.3.1966 passed by the Tahasildar and ALT Shahuwadi in 32-G proceedings. Unfortunately, it appears that due to mistake the said appeal was not filed against the original landlord Prabhakar Ramkrishna Prabhavalkar but was filed against the wife of his brother by name Madhuri Madhukar Prabhavalkar. This appeal came to be allowed by the Assistant Collector Shahuwadi Kolhapur on 1.4.1987.

(g) The respondent in the said appeal Madhuri Madhukar Prabhavalkar then filed a revision being Revision Application MRT-KP 143/1987 before the Maharashtra Revenue Tribunal seeking to quash and set aside the Judgment and order passed by the

Assistant Collector Shahuwadi Kolhapur on 1.4.1987. One of the grounds urged before the MRT was that the applicant Madhuri had nothing to do with the land bearing Survey no.115. It was contended that the appeal had been filed before the Assistant Collector against a person who was not a landlord of the land and therefore, the order allowing the appeal passed by the Assistant Collector was not binding upon the real landlord. On this ground alone, by the impugned Judgment and order dated 5.4.1991 the MRT allowed the revision filed by applicant-Madhuri Prabhavalkar.

3. I have heard both the sides. In my view, no fault can be found with the finding given by the MRT while allowing the revision. It is clear from the record that Appeal TNC No.22/96 was filed against a lady who was not a landlord in respect of the land in question being survey no.115. In fact, ground no.3 in the petition clearly indicates that the appeal had been filed by impleading the wife of the brother of the landlord due to inadvertance. Be that as it may, the net result is that the Judgment given by the Assistant Collector, Kolhapur on 1.4.1987 would be a nulity as against the landlord and the finding of the MRT on this point is legally correct. In the circumstances, there is no substance in the petition and rule will have to be discharged. Petition is dismissed.

4. It is made clear that dismissal of this petition would not preclude the petitioner/tenant from filing an appeal challenging the order under Section 32-G passed by the Additional Mamletdar & ALT Shahuwadi on 12.3.1966. It is however, made clear that if any such appeal is filed, the question of limitation will be decided by the competent authority on its own merit and that no direction in that regard is being given by this Court. In the circumstances of the case, there will be no order as to costs.

(R.S.Mohite,J)